

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

CLEANUP AND ABATEMENT ORDER NO. 98-055

AGAINST

U. S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT
BIG BEND RESORT CORPORATION

KENNETH BERNARD

Parker Dam - San Bernardino County

The California Regional Water Quality Control Board, Colorado River Basin Region, finds that:

1. The U. S. Department of the Interior, Bureau of Land Management, Yuma District Office, 31150 Winsor Avenue, Yuma, AZ 85365 (hereinafter referred to as the discharger) is the owner of the property located near Parker Dam, California, three miles south of Parker Dam.
2. Big Bend Resort Corporation, 3991 MacArthur Boulevard, Suite 350, Newport Beach, CA 92660 (hereinafter referred to as the discharger) is the operator of the facility from which the unauthorized release of petroleum hydrocarbons (gasoline) occurred.
3. On April 20, 1995, the San Bernardino County Department of Environmental Health Services filed an Unauthorized Release Report with this office. The report indicates that gasoline had leaked from the fuel dispenser piping at the Resort, polluting the soil.
4. On April 20, 1995, Regional Board staff responded to the reported release of gasoline at Big Bend Resort. The piping leak was found to be approximately six feet from the Colorado River, polluting the soil.
5. By letter dated April 27, 1995, the San Bernardino County Department of Environmental Health Services directed the dischargers to conduct a complete subsurface investigation pursuant to the California Code of Regulations, Title 23, Division 3, Chapter 16, Article 11.
6. On May 3, 1995, the Regional Board's Executive Officer issued a letter to the dischargers requiring a complete subsurface investigation pursuant to Section 13267 of the California Water Code.
7. On September 29, 1995, the Regional Board's Executive Officer issued Cleanup and Abatement Order No. 95-091. This Order required the dischargers to submit the following:

By January 1, 1996, prepare a workplan to fully delineate the extent of the pollution in both soil and ground water, characterize the site hydrology, and evaluate the actual or potential off-site migration of pollutants.

By March 1, 1996, submit a progress report.

By May 1, 1996, submit a technical report outlining remedial measures and a time schedule for implementation.

Submit quarterly status reports on January 15, April 15, July 15 and October 15 of each year.

8. On June 7, 1996, a technical report entitled "Preliminary Subsurface Investigation Report", prepared for the dischargers by AGRA Earth & Environment, Inc., was received by this office.

9. By letter dated July 18, 1996, Regional Board staff notified the dischargers that the technical report entitled "Preliminary Subsurface Investigation Report" was not adequate, and requested an additional subsurface investigation to define the lateral and vertical extent of the pollution. The dischargers were to submit these findings by September 10, 1996.
10. In October 1996, the Regional Board staff contacted the discharger via phone to inquire as to the status of the additional subsurface investigation requested by letter dated July 18, 1996.
11. By letter dated October 16, 1996, Regional Board staff again requested the dischargers to conduct an additional subsurface investigation.
12. By Letter dated April 2, 1997, Regional Board staff again requested the additional subsurface investigation report.
13. By letter dated August 18, 1997, the dischargers were again requested to submit the findings of an additional subsurface investigation report.
14. On September 12, 1997, Regional Board staff received a report entitled "Draft Additional Subsurface Investigation Report", prepared for the dischargers by AGRA Earth & Environment, Inc. This report indicated elevated levels of pollutants in the ground water, gasoline (TPH-g) 97.9 mg/L, benzene 31.5 mg/L, toluene 31.5 mg/L, ethyl-benzene 24.7 mg/L, xylenes 16.0 mg/L and MTBE 27.0 mg/L.
15. Depth to first ground water at the site is less than ten feet below ground surface. Due to the shallow ground water at the site, the proximity of the Colorado River, and the sampling results indicating elevated levels of gasoline and gasoline constituents, the ground water and/or surface waters have been, or threaten to be, adversely impacted by gasoline pollution.
16. The Water Quality Control Plan for the Colorado River Basin Region of California (Basin Plan) was adopted November 17, 1993, and designates the beneficial uses of ground and surface waters in this Region.
17. The site lies within the Colorado Hydrologic Unit, as depicted on interagency hydrologic maps prepared by the Department of Water Resources in August 1986.
18. The beneficial uses of ground waters in the Colorado Hydrologic Unit are:
 - a. Municipal supply (MUN)
 - b. Industrial supply (IND)
 - c. Agricultural supply (AGR)
19. The beneficial uses of the waters in the Colorado River are:
 - a. Municipal supply (MUN)
 - b. Industrial supply (IND)
 - c. Agricultural supply (AGR)
 - d. Aquacultural supply (AQ)
 - e. Ground Water Recharge (GWR)
 - f. Water Contact Recreation (REC 1)
 - g. Noncontact Water Recreation (REC 2)
 - h. Warm Freshwater Habitat (WARM)
 - i. Cold Freshwater Habitat¹ (COLD)
 - j. Wildlife Habitat (WILD)
 - k. Hydropower Generation (POW)

¹ Limited to reach from Parker Dam to Nevada State Line

1. Preservation of Rare, Endangered or Threatened Species (RARE)

20. Water Code Section 13050 states that a pollution may include contamination. It defines each of these terms and nuisance as:

“(k) “Contamination” means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease.”

“(l) “Pollution” means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects ...(A) the waters for beneficial uses. (B) Facilities which serve these beneficial uses...”

“(m) “Nuisance” means anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property...”

21. Section 13304(a) of the California Water Code states:

“Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.”

22. In conducting an investigation of the quality of any waters of the State within its region, the Regional Board may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region, or any citizen or municipality, or political agency or entity of its state who has discharged, discharges, or is suspected of discharging, or who proposes to discharge, waste outside its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the Regional Board requires.
23. The dischargers have caused, and threatens to cause, waste to be discharged into waters of the state, and thereby has created a condition of pollution.
24. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act [Public Resources Code, Section 21000, et seq..., in accordance with Title 14, CCR, Section 15321(a)(2)].

IT IS HEREBY ORDERED that Cleanup and Abatement Order No. 95-091 is rescinded and that, pursuant to Sections 13267 and 13304 of the California Water Code, the dischargers, their agents, assigns or designees, shall clean up and abate the pollution and threatened pollution described above by complying with the following:

1. By May 30, 1998, provide a technical report in the form of a Remedial Action Plan, with a time schedule for implementation to (a) cleanup/close all affected on-site soils, including affected soils and gasoline residue, that may cause ground water degradation, or demonstrate that affected soils that remain to not present a threat to ground water; and (b) clean up, prevent, or otherwise attenuate further migration of pollutants to the surface and/or ground water in the vicinity of the site.
2. By June 15, 1998, initiate containment and cleanup of pollutants in soils and ground water, and submit a technical report that certifies compliance with this item.
3. On July 15, 1998 and each calendar quarter thereafter, provide technical reports on the effectiveness of the containment and cleanup of contaminants.

Complete the following tasks in accordance with the prescribed time schedules. All work outlined above shall be performed under the direction of a California registered civil engineer or certified engineering geologist. All plans and time schedules are subject to review and approval by the Regional Board's Executive Officer. Submitted time schedules become part of this Order once approved or revised by the Regional Board's Executive Officer.

If, in the opinion of the Regional Board's Executive Officer the dischargers violate this Order, the Regional Board's Executive Officer may apply to the Attorney General for judicial enforcement, or issue a complaint of Administrative Civil Liability.

PHIL GRUENBERG

Date